IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 727 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

PRAVINBHAI D SOLANKI

Appearance:

1. Special Civil Application No. 727 of 2002

MR SUDHANSHU S PATEL for Petitioner No. 1

MR TR MISHRA for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 16/03/2002

ORAL JUDGEMENT

Heard learned advocate Mr. S.S. Patel for the petitioner and Mr.T.R. Mishra for the respondent workman who is appearing on caveat.

Rule. Service of rule is waived by Mr.Mishra on behalf of the respondent workman. In the facts and circumstances of the case, the matter has been taken up for final hearing today itself.

By way of this petition, the petitioner has challenged the award made by the labour court Bhavnagar in Reference No. 469 of 1994 dated 17.1.2001 wherein the labour court has set aside the dismissal order and has granted reinstatement with continuity of service, with 25 per cent of the back wages for the intervening period and has also awarded cost of Rs.1,000.00 in favour of the workman. Past record of the workman has been produced at page 23, annexure B to the memo of petition.

Learned advocate Mr. Patel appearing for the petitioner has submitted that the respondent conductor has recovered fare from eight passengers and has not issued ticket upto the checking point and till the checking party had come, he was sitting in the conductor's seat and, therefore, according to Mr. Patel, it was a case of misappropriation and dishonesty committed by the respondent and, therefore, in the facts and circumstances of the case, the order of punishment of dismissal from service was quite legal, just, proper and valid and the labour court ought not to have interfered with such just and legal order of punishment in exercise of the powers under section 11-A of the Industrial Disputes Act, 1947. He has further submitted that the labour court has made award of 25 per cent of the back wages for the intervening period without assigning any reasons in support of such award. According to him, once the charge has been held to have been proved, then, the grant of back wages for the intervening period is wholly unwarranted and, therefore, the labour court ought not to have granted any back wages for the intervening period while reinstating the workman. According to him, when it was found by the labour court that there was some negligence on the part of the workman, then, while making award of reinstatement in favour of the respondent workman in exercise of such powers, the labour court ought to have imposed some punishment having recurring effect. According to him, since the labour court has not imposed any such punishment while making the award of reinstatement with 25 per cent of the back wages for the intervening period, the impugned award is required to be quashed and set aside.

On the other hand, learned advocate Mr. Mishra appearing for the workman has submitted that there was

allegation against the respondent workman about the recovery of fare from eight passengers at the time of checking but the question is that at the time of checking, though allegation was made that he has recovered fare and not issued ticket, however, at that time, traffic cash has not been checked and it ought to have been decided whether he has collected fare or not and that could be found only from the spot inquiry immediately which has not been done and, therefore, merely relying upon the statement of the reporter the conclusion was drawn by the inquiry officer without examining the passengers during the course of departmental inquiry and, therefore, finding of the disciplinary authority that the charge of dishonesty and misappropriation is proved is baseless and perverse and, therefore, the labour court was right in finding that at the time of working as a conductor, the respondent was not vigilant enough in issuing the tickets and, therefore, the labour court has come to the conclusion that the charge of negligence has been proved but the charge of dishonesty and misappropriation has not been proved before the labour court and the labour court has given valid and cogent reasons in support of its findings. The labour court is having such powers under section 11-A of the Industrial Disputes Act, 1947 and under such powers, the labour court can modify the punishment if it is found by the labour court that the punishment imposed upon the delinquent is harsh and highly disproportionate to the charge. According to him, in the facts and circumstances of the case, the labour court has rightly made the award in question and the same would not require any modification by this court in this petition.

I have considered the submissions made by the learned advocates for the parties. I have also perused the award in question. The labour court has given cogent reasons in support of its findings that when the charge of recovering fare from eight passengers was levelled at the time of checking, then, traffic cash was required to be checked which has not been done in the instant case. Second aspect is that the statements of the passengers were obtained by the checking squad at the time of checking but during the course of departmental inquiry, no passengers were examined and the charges levelled against the workman were held to have been proved only on the basis of the statement of the reporter and, therefore, the finding of the inquiry officer were held to be baseless and perverse by the labour court in respect of the charge of dishonesty and misappropriation. For coming to such conclusion, the labour court has

discussed entire evidence and has examined each and every aspect in detail and thereafter, it has come to the conclusion that the order of dismissal from service is harsh and unjustified and therefore, in view of such findings, the labour court, in exercise of the powers under section 11A of the Industrial Disputes Act, 1947, has set aside the order of dismissal and has directed the petitioner to reinstate the respondent with continuity of service. So far as this part of the award in question is concerned, learned advocate Mr. Patel appearing for the petitioner corporation has not been able to point out any error and/or irregularity committed by the labour court in exercise of the powers under sec. 11 A of the Act. He has also not been able to point out any jurisdictional error committed by the labour court in exercise of such powers while granting reinstatement in favour of the respondent workman.

However, so far as the directions of the labour court for payment of 25 per cent of the back wages for the intervening period are concerned, the vie taken by the labour court is erroneous on the ground that once the charge of negligence has been found to be proved, the labour court ought not to have granted any back wages. Further, past record was produced before the labour court. However, while making the award, the labour court has ignored the same. In past, in all, five defaults were committed by the labour court which were similar in nature. Therefore, considering these aspects of the matter, according to my opinion, the award in question would require modification in so far as it relates to grant of back wages. According to my opinion, looking to the negligence on the part of the workman in not issuing the tickets to the passengers in time, some punishment is required to be imposed upon the workman. According to my opinion, considering the lapse on the part of the workman in not issuing the tickets in time it would be just and proper to direct the petitioner corporation to stop two annual increments of the respondent workman with cumulative effect by way of punishment over and above the denial of 25 per cent of the back wages which has been granted by the labour court while making award of reinstatement. To that extent, award made by the labour court is required to be modified. Needless to say that the remaining part of the award of the labour court shall remain in tact i.e. reinstatement in service with continuity of service has not been disturbed by this Court.

Accordingly, the award of the labour court dated 17th January, 2001 in reference NO. 469 of 1994 is set

aside in so far as it relates to grant of 25 per cent of the back wages for the intervening period. Over and above that, the petitioner is further directed to stop two annual increments of the respondent workman with cumulative effect. To that extent, the award in question shall stand modified. Rest of the award made by the labour court i.e. reinstatement of the respondent workman with continuity of service shall remain in tact. Rule is made absolute in terms indicated hereinabove with no order as to costs.

At this juncture, learned advocate Mr. Mishra appearing for the respondent workman has submitted that the award in question was made by the labour court on 17th January, 2001 but till this date, the respondent has not been reinstated in service by the petitioner corporation and, therefore, some suitable directions may be issued to the petitioner corporation to reinstate the respondent workman in service in terms of the award as modified by this court. Considering the submissions made by Mr. Mishra, it is directed to the petitioner corporation to reinstate the respondent workman in service with continuity as directed by the labour court within one month from the date of receipt of copy of this order and then to pay full wages to the respondent workman from the date of the award in question till the actual reinstatement of the respondent workman, within two months from the date of receipt of copy of this order.

16.3.2002. (H.K. Rathod,J.)

Vyas